



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

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14 June 2001

Docket Management Facility
U.S. Department of Transportation, Rm PL-401
[USCG 2000-7759]
Washington, DC 20590-0001

Re: Chemical Testing

To Whom It May Concern:

This letter is written in response to your 30 April 2001 *Federal Register* Notice (66 FR 21502) seeking public comments on the proposed amendments to the Coast Guard's drug testing regulations.

The International Association of Drilling Contractors is a trade association representing the interests of the owners and operators of oil, gas, and geothermal well drilling equipment worldwide. Our membership includes all companies currently operating mobile offshore drilling units (MODUs) under U.S. flag, and all companies operating MODUs in areas subject to the jurisdiction of the United States.

We are interested in this proposed rule since it appears that it will affect the owners and operators of these units and their personnel.

We believe that the Coast Guard's proposed amendments to 46 CFR Part 4 are inadequate. We suggest the following specific changes:

1. §4.06-1(f) should be revised as follows

(f) **Except as provided for in 46 CFR 16.205, each marine employer shall implement the testing requirements of this subpart in accordance with the implementation schedule provided in 46 CFR 16.205 and 16.207 the procedures detailed in 46 CFR part 40.**

Reason: 46 CFR 16.205 no longer provides an implementation schedule. It currently provides an exception to the testing requirements as they pertain to certain foreign nationals employed on U.S. ships.

The simple change suggested by the NPRM would have inappropriately retained a reference to the implementation schedule that was removed several years ago.

2. §4.06-5 should be revised as follows:

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a serious marine incident shall provide ~~blood~~ **saliva**, breath or urine specimens for ~~chemical~~ tests required by §4.06-10 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide ~~blood~~ **saliva**, breath or urine specimens, this refusal shall be noted on Form CG-2692B and in the vessel's official log book, if one is required.

(c) No individual may be forcibly compelled to provide specimens for chemical tests required by this part; however, refusal is considered a violation of regulation and could subject the individual to suspension and revocation proceedings under part 5 of this chapter and removal from any duties which directly affect the safety of the vessel's navigation or operations **and may be reported to potential future employers in accordance with 49 CFR 40.25.**

Reason: The revised DOT testing procedures do not contemplate routine blood testing. Our reading of those regulations is that such testing is currently limited to the “further medical evaluation” conducted by MROs under 49 CFR 40.195. Accordingly, there is no need to suggest that individuals need submit to blood tests in the post-incident situation. However, the revised DOT rules to provide for testing of saliva. Such testing should be cited in this rule. We also consider it advisable to give employees further warning of the consequences of drug and alcohol abuse and its potential consequences.

3. §4.06-10 should be revised as follows:

Each individual required to submit to chemical testing shall, as soon as practicable, provide the following specimens for ~~chemical~~ testing:

(a) Urine specimens, collected in accordance with Sec. 4.06-20 and ~~part 16 of this chapter~~ **49 CFR part 40.**

(b) ~~Blood~~ **Saliva** or breath specimens, or both, collected in accordance with Sec. 4.06-20 **and 49 CFR part 40.**

Reason: As above, the revised DOT testing procedures do not contemplate routine blood testing. Our reading of those regulations is that such testing is currently limited to the “further medical evaluation” conducted by MROs under 49 CFR 40.195. Accordingly, there is no need to suggest that individuals need submit to blood tests in the post-incident situation. However, the revised DOT rules do refer to testing of saliva and it should be included in this rule.

4. §4.06-20 should be revised as follows:

Sec. 4.06-20 Specimen collection requirements.

(a) All inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, are required to have on board at all times **an alcohol breath testing device meeting the requirements of 49 CFR 40.229.** ~~capable of determining the presence of alcohol in a person's system. The breath testing device shall be used in accordance with procedures specified by the manufacturer.~~

(b) The marine employer shall ensure that urine specimen collection and shipping kits meeting the requirements of ~~Sec. 16.330 of this part~~ **49 CFR part 40** are readily available for use following serious marine incidents. The specimen collection and shipping kits need not be maintained aboard each vessel if they can otherwise be readily obtained within 24 hours from the time of the occurrence of the serious marine incident.

* * * * *

(d) When obtaining ~~blood~~ **saliva**, breath, and urine specimens, the marine employer shall ensure that the collection process is ~~supervised by either qualified collection personnel, the marine employer, a law enforcement officer, or the marine employer's representative~~ **carried out in accordance with 49 CFR part 40.**

~~(e) Chemical tests of an individual's breath for the presence of alcohol using a breath testing device may be conducted by any individual trained to conduct such tests. Blood specimens shall be taken only by qualified medical personnel.~~

Reason. The revised DOT regulations refer to more than one type of device and provide specific procedures for their use, not limited to those of the manufacturer. The requirement for post-accident testing to conform to 49 CFR part 40 is addressed elsewhere, this includes the requirement to train individuals to conduct these tests. In this regard, IADC had submitted comments to the DOT's rulemaking docket regarding what we considered to be the impracticability of its (then proposed) protocols in the Coast Guard's post-accident testing situation. Copies of these comments were also provided to the Coast Guard. As DOT provided no exception within its rules (as was provided for the Federal Railroad Administration) we believe that the provisions of 49 CFR 40.1 are intended to be applied literally so as to govern ALL other drug and alcohol testing undertaken under DOT agency regulations – including Coast Guard post-incident testing. Blood and saliva testing have been previously discussed.

5. §4.06-30 should be **removed** in its entirety.

Reason: We see no feasible means of complying with the DOT's drug testing regulations in testing human remains. Again, we provided our comments to this effect to DOT's rulemaking docket, with a copy to the Coast Guard. As our arguments were apparently not considered persuasive, we can only conclude that, as indicated above, the provisions of 49 CFR 40.1 are to be applied to ALL drug and alcohol testing undertaken under DOT agency regulations.

6. We believe that §4.06-40(a) should be removed, and §4.06-40(b) renumbered and revised to read as follows:

The marine employer shall ensure that the urine specimen collection procedures of § ~~16.310~~ **16.113** of this part and the chain of custody requirements of ~~Sec. 16.320~~ **49 CFR part 40, subpart D**, are complied with. The marine employer shall ensure that urine specimens required by §§ 4.06-20 and ~~4.06-30~~ are promptly shipped to a laboratory complying with the requirements of 49 CFR part 40. Urine specimens must be shipped by an expeditious means, but need not be shipped in a cooled condition for overnight delivery.

Reason: The DOT regulations provide ample guidance on custody and shipping of samples. Given that the DOT regulations do not address refrigeration of specimens, we would suggest that this is an issue that might need to be examined further by the Coast Guard regarding its necessity.

7. We believe that §§4.06-50(a), (b) and (c) should be replaced by the following:

Specimen analysis and follow-up procedures shall be in accordance with 49 CFR part 40.

Reason: The DOT regulations adequately address the procedures for specimen analysis and follow-up.

8. We believe that the proposed §16.201(g) should be revised to read as follows:

(g) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the provisions of 40 CFR subpart O regarding return-to-duty must be met.

Reason: 40 CFR subpart O provides detailed requirements regarding requirements for return-to-duty determinations. Contrary to the wording proposed by the Coast Guard for this section, the MRO is not the professional involved in this decision.

If you have any questions about these comments, please feel free to contact me by phone at (281) 578-7171, ext. 207.

Sincerely,



Alan Spackman
Director, Offshore Technical
and Regulatory Affairs